

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.02 of 2007**

- Satyaprakash S/o Jagdamba Prasad Kolta, Aged about 16 years, resident of Village Keshla, Tehsil and District- Raigarh, Chhattisgarh

---- Appellant**Versus**

1. Satrugan S/o Raghunath Teli
2. Smt. Dhanmati S/o Raghunath Teli, W/o Bodhram, No.1 & 2 are resident of Gadh-Umariya, Tahsil and District Raigarh (CG)
3. Smt. Manmati D/o Raghunath Teli, W/o Santosh, Resident of Village Kodatarai, Tehsil and District- Raigarh, Chhattisgarh.
4. Smt. Rangvati D/o Raghunath Teli, W/o Sahdev, resident of Village Jhulenpali, Post Bade-Hardi (Pussore), Tahsil and District Raigarh (CG)
5. Shaukilal, S/o Raghunath Teli, resident of Village Amlipali, Tahsil and District Raigarh (CG)
6. The State Of Chhattisgarh Through the Collector, Raigarh, Chhattisgarh.

---- Respondents**Present:-**

Shri Raghvendra Pradhan, counsel for appellant.

Shri Ravish Verma, Government Advocate for respondent No.6/State.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava**JUDGMENT ON BOARD****16/07/2020**

Heard.

1. Shri Varunendra Mishra, learned counsel for respondent No.1 moved an application for withdrawal of power. He submits that he has no instructions.
2. Accordingly, the application is allowed and Shri Varunendra Mishra, learned counsel for respondent No.1 is permitted to withdraw his power on

behalf of respondent No.1.

3. This second appeal is directed against the impugned judgment and decree dated 11-08-2006 passed by the Third Additional District Judge, FTC, Raigarh in Civil Appeal No.39-A/2002, affirming the judgment and decree dated 29-11-2001 passed by the Third Civil Judge Class-II, Raigarh in Civil Suit No.10-A/2001. Appellant-plaintiff filed a suit seeking decree of declaration and permanent injunction on the pleadings inter alia that the disputed land ad-measuring 0.073 Hectare of Khasra No.139/2 and 1.084 Hectare situated in Khasra No.141 in Village Amlipali, was purchased by Jagdamba Prasad in the name of his minor son-Satyapraksh, the plaintiff, vide registered sale deed dated 31-03-1995 from defendants No.1 to 6. Entire sale consideration was paid and possession of land was also delivered.

4. In this manner, right, title and interest including possession of the disputed land was delivered in favour of the plaintiff-Satyaprakash. Further case of the plaintiff was that the defendants started disputing plaintiff's possession over the land by stating that the sale deed was to take effect only upon payment of full consideration and as that was not done, no title passed, hence, on that basis, mutation of name of the plaintiff in the revenue records was opposed. Finally, the plaintiff filed a suit seeking declaration of title and permanent injunction.

5. The defendants, though, did not dispute execution of sale deed, but disputing plaintiff's possession, stated that it was agreed between the parties that the plaintiff has to pay sale consideration of Rs.30,000/-, but only Rs.4,000/- was paid and balance amount of consideration was not paid, in respect of which agreement dated 31-03-1995 was executed by Jagdamba, father of the plaintiff in favour of Shatrughan, the defendant, that only upon

payment of full amount of consideration, the plaintiff would get title and interest over the property. As balance amount of consideration was not paid, title did not pass in favour of the plaintiff. Receipts of payment advanced by the plaintiff before the Court, are forged and fabricated.

6. On the basis of the pleadings of the parties, learned appellate Court framed issues. Learned trial Court recorded a finding that the plaintiff's case that he had paid entire sale consideration and obtained receipt of balance amount of consideration of Rs.26,000/- could not be proved. The plaintiff failed to prove regarding payment of balance amount of sale consideration of Rs.26,000/-, therefore, title did not pass in favour of the plaintiff and the suit was dismissed.

7. The learned lower appellate Court also recorded a finding on the same lines concurring with the finding of the learned trial Court that in absence of proof of payment of balance amount of sale consideration of Rs.26,000/-, no valid title could pass in favour of the plaintiff under registered sale deed dated 31-03-1995.

8. This appeal was admitted for hearing on the following substantial question of law:-

“(A) Whether in view of the defendants admission regarding execution of sale-deed while denying receiving the full consideration, the learned Courts below have committed an error of law in non-suiting the plaintiff?

(B) Whether in the facts and circumstances of the case, the title of the suit land has passed on to the plaintiff and the defendants are only entitled to the balance amount of consideration as they have been divested of the title ?”

9. Learned counsel for the appellant contended that once the Court below recorded a finding that the sale deed was executed and registered on 31-03-1995, merely because the balance amount of sale consideration was not

paid, it will not arrest legal consequences of transfer of right, title and interest over the property and at the most, if the case of the defendants is that the amount of full consideration was not paid, as promised, his remedy is only to seek recovery of the said amount, but the title cannot said to have remained with the defendants only. In support of his submission, learned counsel for the appellant placed reliance upon the judgment dated 10-12-2018 passed by this Court in Second Appeal No.405 of 2002 (***Jant Ram Satnami vs. Daya Das Satnami (died and deleted) and others***) as also judgment dated 09-08-1999 passed by this Court in Second Appeal No.134 of 2005 (***Giriraj Singh (since deceased) through LRs vs. Shaikh Jabbar and others***).

10. Upon due consideration of submission of learned counsel for the appellant, the issue raised and questions of law framed by this Court, are fully answered in the aforesaid two decisions.

11. The Supreme Court has settled issue in its judgment in the matter of ***Vidhyadhar vs. Manikrao and another***¹ as also in the matter of ***Kaliaperumal vs. Rajagopal and another***² to the effect that once sale deed has been executed and registered, title passes in favour of the purchaser. Merely because, full consideration has not been paid and only part paid and part promised to be paid, it will not arrest legal consequences of transfer of title. The remedy with the aggrieved party would be to claim balance amount through appropriate legal proceedings. This is so in view of the requirements of sale as contained in Section 54 of the Transfer of Property Act, 1882. There is no requirement of law as such that in order to effect sale, entire amount of consideration must be paid at the time of execution of sale deed itself. If the parties had agreed for part payment at the time of execution of sale deed and balance payment at a later

1 (1999) 3 SCC 573

2 (2009) 4 SCC 193

date, then also the sale is complete. Indisputably, in the present case, the sale deed was registered one. Both the Courts below have recorded a concurrent finding that execution of sale deed has not been disputed by the defendants nor its registration. If that be so, all the right, title and interest over the suit property will transfer in favour of the plaintiff, even if the case of the defendants is accepted that the plaintiff failed to pay full amount of sale consideration as agreed to by him. That will only give right to the defendants to seek recovery of the balance amount of consideration of Rs.26,000/- through appropriate legal remedy.

12. Vivid examination of the legal position in this regard by the Hon'ble Supreme Court, as discussed by this Court in the case of ***Jant Ram Satnami*** (supra), is as below:-

13. The Supreme Court in the matter of ***Vidhyadhar v. Manikrao and another, (1999) 3 SCC 573***, while considering Section 54 of the Transfer of Property Act, 1882 held that even if the whole of the price is not paid, but sale deed is executed and thereafter registered, if the property is of value of more than ₹ 100, the sale would be complete. It was held as under:-

“36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete.

37. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in Gyatri Prasad v. Board of Revenue, 1973 All LJ 412, it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part payment of consideration by

vendee itself proved the intention to pay the remaining amount of sale price. To the same effect is the decision of the Madhya Pradesh High Court in *Sukaloo and Anr. v. Punau*.

38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in present or in future. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence on record."

14. Similarly, the Supreme Court in the matter of ***Kaliaperumal v. Rajagopal and another*, (2009) 4 SCC 193** has clearly held that payment of entire consideration is not a condition precedent for completion of sale and passing of title and further held that the true test of passing of property is the intention of parties. It was also observed by Their Lordships of the Supreme Court as follows: -

"17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 ("the Act", for short) defines "sale" as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of the Evidence Act."

13. Thus, the view taken by this Court in the case of ***Jant Ram Satnami*** (supra), is squarely applicable in the present case.

Another decision of this Court cited by learned counsel for the appellant in the case of **Giriraj Singh** (supra) has no application in the present case.

14. In the result, the appeal is allowed and the impugned judgment and decree passed by both the Courts below are set aside and the plaintiff's suit is decreed by declaring that by virtue of sale deed dated 31-03-1995, right, title and interest in respect of the land comprised in Khasra No.139/2, area 0.073 Hectare and Khasra No.141/2 in Khasra No.141, ad-measuring 1.084 Hectare, situated in Patwari Halka No.22, Village Amlipali, Tahsil Pussoure, District Raigarh, has validly passed in favour of the plaintiff. The plaintiff having acquired title, the defendants are restrained from interfering with the property in dispute. Parties shall bear their respective cost. Let appellate decree be accordingly drawn.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE